IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.2075 OF 2005

Monito Enterprise & Anr. ..Petitioners.

V/s.

Union of India & Ors. ..Respondents.

Mr.H.R.Shetty for petitioners.

Mr.Y.S. Bhate with G. Hariharan for respondent Nos.1, 4 & 5.

Mr.Saluja i/b.M.V.Kini & Co. for respondent Nos.2 & 3.

CORAM : H.L.GOKHALE AND J.P.DEVADHAR, JJ.

DATED : 16TH NOVEMBER, 2006.

P.C. :-

Heard Mr.Shetty in support of this petition. Mr.Bhate appears for respondent Nos.1,4 & 5 and Mr. Saluja appears for respondent Nos.2 & 3.

2. Petitioners are registered dealers for motor and diesel engine parts and are regular importers of diesel engine parts from various countries. The present petition makes a grievance with respect to the consignment which was imported vide Bill of Entry No. 11886 dated 21st April, 1998. It is the grievance of the petitioners that the respondent Nos.2 & 3 namely the Airport Authority of India auctioned those goods illegally and, therefore, prayer (a) of the petition is to seek the papers of this auction and prayer (b) is to seek a writ of mandamus directing it to return the

goods imported vide that bill of entry.

3. As far as this bill of entry is concerned, it is not disputed by the petitioner that the goods imported were assessed by the Commissioner of Customs and an order in original was passed on 29th April,1998. In fact, at Exhibit E to the petition, there is letter of the petitioner dated 22nd April, 2003 addressed to the Chairman of the Airport Authority of India wherein this order in original is referred to as serial No.5. Mr.Bhate appearing for the Central Government and Commissioner of Customs has shown us this order in original dated 29th April, 1998. It is thus clear that the goods were so assessed on 29th April, 1998. The case of the Airport Authority of India is that although the goods were so assessed and it was known to the petitioner, they did not take steps to clear them. Therefore, it has been specifically stated on affidavit by Mr.A.K.Verma, Manager (Cargo) that a public notice was given in the newspaper published in Times of India edition on 17th September, 1999 and thereafter, they were auctioned on 25th September, 1999. It is submitted that it is the delay on the part of the petitioner in not clearing the goods which finally led to the auction and, therefore, the Airport Authority of India could not retain them in their property. They have also relied on a circular No.11/98 of 1998 issued

by the Central Board of Customs in that regard.

4. It is pertinent to note that the petitioners have filed two petitions earlier. One was Writ Petition No.79 of 2004 which was for the very purpose. The same was withdrawn on 1st April, 2004 with liberty to file another petition. The second petition was bearing No.2287 of 2004. That was also withdrawn on 3rd March, 2005 to file a proper petition indicating all correct dates and annexing all correct documents. Now, this third petition has been filed. There is no difference in any of the submissions which are now raised they have been clearly answered by affidavit of the Commissioner of Customs as well as affidavit filed on behalf of the Airport Authority of India.

5. Before we part with the matter, we may add that it will be open to the petitioners to approach the Airport Authority of India with a proper application and in the event if there is any amount lying with the Airport Authority of India, after adjusting the demurrage and other charges, the same should be paid to the petitioners.

6. There is no substance in the petition. Petition is dismissed.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)